***Submission by Franciscans International***

*In response to the call for input by the Special Rapporteur on the promotion and protection of human rights in the context of climate change’s report on addressing the human rights implications of climate change displacement including legal protection of people displaced across international borders*

*November 2022*

*Introduction*

Franciscans International (FI) welcomes the opportunity to send input for the Special Rapporteur’s report on addressing the human rights implications of climate change displacement including legal protection of people displaced across international borders.

The responses provided are based on situations that FI has worked on in the past years; most of the information is taken or adapted from submissions sent to other UN bodies or from past FI publications. The information FI has received from different countries and regions underscore that the issue of climate induced displacement is very complex. Responses to it will thus have to be multifaceted and differentiated, taking into account the variety of scenarios and protection needs. We note the range of individuals impacted by climate change, and the both imposed or chosen decisions related to relocation that they face, including those forced to relocate permanently and those needing to move temporarily; those that refuse relocation and those unable to, due to economic or other factors; and the cases in between.

The examples mentioned are not comprehensive, but rather illustrative of broader structural issues that FI finds important to raise in the context of the upcoming Special Rapporteur’s report.

Finally, some answers detailed under specific questions may be relevant to other questions given the interlinkage of issues.

Whatever the scenario, the human rights of people who are or could be displaced by sudden or slow-onset hazards must be best respected, protected and fulfilled, at all times.

**Question 1 on experiences and examples of individuals or communities, displaced by climate change.**

FI has addressed the issue of climate migration and its impacts on various countries in its work.

This includes FI’s 2014 and 2020 joint submissions for the Universal Periodic Review of Kiribati.[[1]](#footnote-2) The 2014 submission noted the impact of rising sea-levels and an increase in storm surges on the people of Kiribati, which left individuals exposed to sudden inundation and drowning. The impacts of climate change detailed in the submission also included land shortages, decreases in agricultural harvests, and an increase in health issues. At the time, FI and partners noted the necessity of determining how to deal with a nation whose land is increasingly uninhabitable.

Years prior to the 2020 UN Human Rights Committee decision, the President of Kiribati emphasized that its inhabitants did not want to become refugees and instead coined the concept of “migration with dignity” where citizens could be prepared and “make informed future choices” on the reality of the habitability of their nation.[[2]](#footnote-3)

Displacement caused by climate change is one of the major challenges also faced in Solomon Islands today, and will be an even greater concern in the future. This was underscored to FI during a fact-finding visit in October 2022. Low-lying coastal communities across the country experience temporary displacement caused by climate change. Coastal hazards, such as erosion, flooding and saltwater intrusion into soils and freshwater lenses are exacerbated by sea-level rise caused by climate change. In recent years, coastal communities in Solomon Islands have frequently experienced issues with soil fertility for gardening and a lack of freshwater as a consequence of saltwater intrusion, which has severe implications for communities who rely on subsistence agriculture and the environment for their livelihoods. As a result, many have left their islands for urban centres.

For example, individuals have increasingly left the low-lying atoll of Ontong Java for the informal “Ontong Java settlement” (named after their atoll of origin) in the outskirts of the capital, Honiara. The majority of these individuals cite food insecurity and climate change as reasons for migration. Often newcomers struggle to find employment in Honiara as they lack formal education or skills training; this leads to dependence on relatives and contributes to rising social issues.

Another example is the submerging of Walande artificial island in south Malaita by sea level rise; their neighbors in Fanalei Island are also currently facing similar issues throughout the year.

**Question 3 on the legislation, policies and practices that are in place to give protection to the rights of individual and communities displaced by climate change.**

FI notes key provisions of international human rights treaties as well as objectives of the Global Compact on Migration that are relevant to this discussion. These include:

* Article 6 of the ICCPR affirms the right to life. The Human Rights Committee stressed that: “Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life… Implementation of the obligation to respect and ensure the right to life, and in particular life with dignity, depends, inter alia, on measures taken by States parties to preserve the environment and protect it against harm, pollution and climate change caused by public and private actors”.
* Article 11 of the ICESCR affirms the right to an adequate standard of living, which includes adequate food, clothing, and housing, and to the continuous improvement of living conditions. The CESCR has affirmed that the right should be “seen as the right to live somewhere in security, peace and dignity.” Adequacy is determined in part by climatic, ecological, and other factors.
* Objective 2 (h) of the Global Compact on Migration on joint analysis and information sharing.[[3]](#footnote-4)
* Objective 5 (h) of the Global Compact on Migration on increased cooperation towards solutions for climate change and other migration.[[4]](#footnote-5)

**Question 4 on examples of policies, practices and legal remedies that provide protection for people and communities displaced by climate change.**

Franciscans International notes the UN Inter-Agency Standing Committee’s definition of protection, and its explanation that for actions to be “protection-oriented, it is essential to understand and seek to prevent, mitigate or end actual and potential risks, including violations of international humanitarian and human rights law, producing the harm that affected persons experience during a conflict or disaster.”[[5]](#footnote-6)

*Example of local policies and practices – Solomon Islands[[6]](#footnote-7)*

While there is a State policy on climate change in the Solomon Islands,[[7]](#footnote-8) the Anglican Church of Melanesia (ACOM) has also adopted an internal policy “Anglican Church of Melanesia Climate Change Policy 2014,” which aims to ensure that congregations are resilient and able to adapt to the impacts of climate change.

ACOM is currently taking concrete actions on adaptation and mitigation. These actions contribute to avoid further climate-induced displacement and to provide sustainable help to those who already had to move.

On adaptation, ACOM supports communities affected by climate change through initiatives such as financial support for community backyard gardening and the establishment of water supplies. These initiatives can provide access to water and food security after disasters, and to communities in low-lying islands.

On mitigation, ACOM initiated a project called “Bringing Light to Rural Communities Solar Project,” which provides access to green energy through solar panel installation in all Anglican diocesan medical clinics, Rural Training Centers (RTCs), and nearby communities.

*Strengthening business accountability at the global level*

FI also underscores the need to protect individuals and communities from adverse impacts caused by business entities.

The UN CESCR has underscored that the obligation of States to protect human rights "requires States parties [...] to ensure effective protection against [...] violations of rights linked to corporate activities, and to provide victims of such abuses with access to effective remedies". This obligation extends extraterritorially to business entities over which they can exercise control.[[8]](#footnote-9)

Companies also have the obligation to respect human rights.[[9]](#footnote-10) Given that climate change threatens the enjoyment of all human rights, and that a healthy environment is recognized as a universal human rights, companies have a clear responsibility to prevent harmful environmental impacts, contribute to climate change adaptation, and remedy any adverse human rights impacts they have caused or contributed to.

In their environmental and human rights due diligence processes, businesses should assess the impact of their operations on climate-induced displacement; map areas where the company is working, taking note of communities vulnerable to or affected by climate-induced internal displacement; and consult with such communities. This is to ensure the participation of these communities in decision-making and in the design of preventive and remediation measures, including where appropriate, resettlement to avoid cross-border movements. It should also consider the specific circumstances of workers that may be refugees, and are “vulnerable to exploitation, discrimination and abuse in the workplace.”[[10]](#footnote-11)

The third draft of the legally binding instrument (LBI) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises also recognizes refugees and internally displaced persons, amongst others, as facing heightened and specific risks of business-related human rights abuses,[[11]](#footnote-12) as well as the additional obstacles these populations often face when seeking access to remedy.[[12]](#footnote-13) Due diligence policies should account for these issues.

Companies should also monitor the implementation and effectiveness of their responses to mitigate the human rights impacts of climate change, including internal displacement, and report publicly on their findings.

**Question 6 on separate considerations for people or communities internally displaced and those displaced across international borders[[13]](#footnote-14)**

FI and its partners have identified that the multi-causality of human mobility, seasonal migratory flows within countries, voluntary displacement in anticipation of desertification or sea level rise, the lack of political interest of public authorities and the great attention traditionally paid to other causes of displacement (violence, disasters, insecurity, poverty, megaprojects, corruption, among others) represent obstacles to establishing clear causal links between displacement and gradual climate change phenomena. This in turn results in a lack of public policies to comprehensively address displacement in its different expressions.

In Central America, people working along the migratory routes noted that water scarcity first became a factor of internal displacement with the emergence of the so-called Dry Corridor. Years of drought in El Salvador, which have generated the so-called water stress,[[14]](#footnote-15) combined with gang violence and extreme poverty, caused social conflicts that led to displacement, which later provoked cross-border migration.

Similarly, in Guatemala, extreme weather-induced droughts reduced agricultural production leading to food insecurity and poverty. This, together with other impacts of gradual climate change phenomena, organized crime, violence, and the social and environmental impacts of megaprojects, such as dams and mining, have been drivers of internal displacement for several years. In both Guatemala and El Salvador, the lack of state policies to address the impacts of mobility caused by climate change and in some cases, megaprojects (which also contribute to climate change), have intensified internal and cross-border displacement.

In 1998, hurricane Mitch hit Central America. In Honduras, the hurricane left thousands dead and up to 1.5 million people affected, including 285,000 who lost their homes. Some of the affected populations were temporarily relocated in camps while others were internally displaced to other cities. Some who were unable to go back to their communities benefited from relocation programs a couple of years after the hurricane, while others remained in informal settlements. In November 2021, almost 25 years after the hurricane, Franciscans International visited one of these settlements in a mountain close to Tegucigalpa, Colonia Nueva Capital. These communities live in extreme poverty, lack access to safe drinking water and sanitation, education, and health facilities, and face increased organized crime and violence. These living conditions are now driving individuals to migrate to other countries. [[15]](#footnote-16)

**Question 7 on the concept of “climate change refugee”.**

As aforementioned, there are various drivers and protection needs for people who move because of climate change impacts. For people whose place of origin will become inhabitable or even disappear, there will be no possibility of return and the perspective of being considered as refugees their whole lives, even over generations, may not be an acceptable solution. In these cases, and following established procedures of RSD, it can be assumed that there will be prima facie recognition of “climate refugee status”, with the list of States only growing (rather than shifting depending on context as with other claims). In other cases, people may see in the status of refugee the only way to find protection in the short and mid-term.

As we also have illustrated in this input, climate change may be one of the several drivers that cause displacement in such contexts, determining who is granted “climate change refugee” status may become complex. Thus, while the recognition of a new category may be useful to enhance protection, consideration should be given to also interacts with other factors to justify someone’s unwillingness or inability to return to their country of origin. This would largely correspond to the 1984 Cartagena Declaration on Refugees, which expanded the definition to include “persons who have fled their country because their lives, safety or freedom have been threatened by generalized violence, foreign aggression, internal conflicts, massive violation of human rights or other circumstances which have seriously disturbed public order.”[[16]](#footnote-17) The Declaration is non-binding, but has been incorporated into the national laws of States across Latin America and has become an example of regional customary law. A more detailed analysis of this development is provided in another submission under the present call for inputs by our partner, the Center for Justice and International Law (CEJIL),

Finally, FI wishes to highlight its understanding of the 2020 decision by the UN Human Rights Committee. As the call for input itself mentions, in January 2020, the Human Rights Committee reviewed a communication from a national of the Republic of Kiribati, who was challenging the rejection of his application for refugee status and subsequent deportation from New Zealand. The Committee accepted that rising sea levels would “likely render the Republic of Kiribati uninhabitable,” and noted: “the timeframe of 10 to 15 years, as suggested by the author, could allow for intervening acts by the Republic of Kiribati, with the assistance of the international community, to take affirmative measures to protect and, where necessary, relocate its population.”[[17]](#footnote-18) Hence, the Committee did recognize the effects of climate change, but in this particular situation, found that because of this timeframe and concurrent steps taken by the Government of Kiribati, the individual did not face “a risk of an imminent, or likely, risk of arbitrary deprivation of life upon return to Kiribati.”[[18]](#footnote-19) Although the petitioner himself was not granted refugee status, the decision ultimately leaves the door open for others seeking protection from the effects of climate change (especially those under imminent threat).

1. Joint Stakeholders’ Submission on: The Human Rights Situations in Kiribati, Universal Periodic Review of the Republic of Kiribati, 21st Session (October-November 2014), Franciscans International, et al, available at <http://www.upr-info.org/sites/default/files/document/kiribati/session_21_-_january_2015/js1_-_joint_submission_1.pdf>; Joint Stakeholders’ Submission on: The Human Rights Situations in Kiribati, Universal Periodic Review of the Republic of Kiribati, 35th Session, (20-31 January 2020), Franciscans International, et al, available at <https://franciscansinternational.org/fileadmin/media/2020/UN_Sessions/HRC43/UPR35_Kiribati.pdf> [↑](#footnote-ref-2)
2. Statement by He Te Beretitenti (President) of the Republic of Kiribati, His Excellency Anote Tong, on the occasion of the Panel Dialogue on Climate Change and Human Rights, 6 March 2015. [↑](#footnote-ref-3)
3. Objective 2(h) calls “Strengthen joint analysis and sharing of information to better map, understand, predict and address migration movements, such as those that may result from sudden-onset and slow-onset natural disasters, the adverse effects of climate change, environmental degradation, as well as other precarious situations, while ensuring effective respect for and protection and fulfilment of the human rights of all migrants” [↑](#footnote-ref-4)
4. Objective 5(h) calls to “Cooperate to identify, develop and strengthen solutions for migrants compelled to leave their countries of origin owing to slow-onset natural disasters, the adverse effects of climate change, and environmental degradation, such as desertification, land degradation, drought and sea level rise, including by devising planned relocation and visa options, in cases where adaptation in or return to their country of origin is not possible”.  [↑](#footnote-ref-5)
5. UN Inter-Agency Standing Committee Policy on Humanitarian Action, October 26, p.2-3, available at: https://reliefweb.int/report/world/inter-agency-standing-committee-policy-protection-humanitarian-action [↑](#footnote-ref-6)
6. Franciscans International is very grateful to ACOM for the collaboration around FI’s recent mission to the Solomon Islands as well as for the contribution to this input, providing specific elements concerning the situation in the country. [↑](#footnote-ref-7)
7. Solomon Islands’ National Climate Change Policy Framework 2012 [↑](#footnote-ref-8)
8. UN CESCR, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, para. 30 [↑](#footnote-ref-9)
9. UN CESCR, Statement on universal affordable vaccination against coronavirus disease (COVID-19), international cooperation and intellectual property, para. 8 [↑](#footnote-ref-10)
10. UN CESCR, General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights), para. 47(i) [↑](#footnote-ref-11)
11. Preambulary paragraph 13, Article 6.4(c), and Article 16.4 of the third revised draft (17 August 2021) of the legally binding instrument (LBI) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf [↑](#footnote-ref-12)
12. Article 15.7 of the LBI [↑](#footnote-ref-13)
13. This section is based on a joint CEJIL-FI submission provided to the call for inputs to the Special Rapporteur on the human rights of migrants, available at <https://www.ohchr.org/sites/default/files/2022-05/cejil-franciscans-international.docx> [↑](#footnote-ref-14)
14. See UN Special Rapporteur on the Rights to water and sanitation during his visit to El Salvador in 2016, Preliminary observations available at  [https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19974&LangID=E](%20https%3A//www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=19974&LangID=E) [↑](#footnote-ref-15)
15. See joint CEJIL-FI submission provided to the call for inputs to the Special Rapporteur on the human rights of migrants, available at <https://www.ohchr.org/sites/default/files/2022-05/cejil-franciscans-international.docx> [↑](#footnote-ref-16)
16. Cartagena Declaration on Refugees, Colloquium on the International Protection of Refugees in Central America, Mexico and Panama,adopted by the Colloquium on the International Protection of Refugees in Central America, Mexico and Panama, held at Cartagena, Colombia from 19 - 22 November 1984, para. 3, available at <https://www.oas.org/dil/1984_cartagena_declaration_on_refugees.pdf> [↑](#footnote-ref-17)
17. Views adopted by the Committee under article 5 (4) of the Optional Protocol, concerning communication No. 2728/2016, Human Rights Committee, 7 January 2020, CCPR/C/127/D/2728/2016, para. 9.12 [↑](#footnote-ref-18)
18. Ibid, para 4 [↑](#footnote-ref-19)